

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

META PLATFORMS, INC.,

Plaintiff,

v.

BRIGHT DATA LTD.,

Defendant.

**[PROPOSED] PROTECTIVE ORDER**

Case No. 3:23-CV-00077-EMC (AGT)

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, trade secret, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Court enters the following Protective Order.

This Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Nor does this Order does entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

**2. DEFINITIONS**

2.1 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

1           2.2     “CONFIDENTIAL” Information or Items: Information (regardless of how it is  
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
3 of Civil Procedure 26(c), or the disclosure of which may cause harm to a Party or Non-Party.

4           2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
5 well as their support staff).

6           2.4     Designating Party: A Party or Non-Party that designates information or items that  
7 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
9 CODE”.

10          2.5     Disclosure or Discovery Material: All items or information, regardless of the  
11 medium or manner in which it is generated, stored, or maintained (including, among other things,  
12 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
13 responses to discovery in this matter.

14          2.6     Expert: A person with specialized knowledge or experience in a matter pertinent  
15 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
16 as a consultant in this action, (2) is not a past or current employee or contractor of a Party or of a  
17 Party’s competitor, and (3) at the time of retention, is not anticipated to become an employee of a  
18 Party or of a Party’s competitor.

19          2.7     “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
20 Items: Extremely sensitive “Confidential Information or Items,” disclosure of which to another  
21 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
22 less restrictive means.

23          2.8     “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:  
24 Extremely sensitive “Confidential Information or Items” representing computer code and  
25 associated comments and revision histories, formulas, engineering specifications, or schematics  
26 that define or otherwise describe in detail the algorithms or structure of software or hardware  
27  
28

designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 House Counsel: Attorneys who are employees of a party to this action and have responsibility for overseeing this litigation. House Counsel does not include Outside Counsel of Record or any other outside counsel. The identity of House Counsel must be disclosed to the Producing Party prior to receiving Protected Materials.

2.10 Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.11 Outside Counsel: Attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.12 Party: Any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.13 Producing Party: A Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.14 Professional Vendors: Persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.16 Receiving Party: A Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected or Discovery Materials (as defined above), but also (1) any information copied or extracted from

Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

#### 4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

#### 5. DESIGNATING PROTECTED MATERIAL

5.1 All documents and information produced by a Producing Party may initially be deemed "CONFIDENTIAL," in accordance with procedures set forth below.

5.2 A Party that has received Protected Material and that would like to use, and in the absence of the restrictive confidentiality designation would use, a specific document or testimony in a manner not permitted by the designation may request that the Designating Party review the document's initial confidentiality designation to determine whether it should remain or be given some other designation. Once a party has made a request that a document's initial confidentiality

1 designation be reviewed, the Designating Party shall have fourteen (14) days, unless otherwise  
2 agreed upon, to make a final confidentiality designation.

3 5.3 Exercise of Restraint and Care in Designating Material for Protection. In making  
4 a final confidentiality designation, a Designating Party must take care to limit any such designation  
5 to specific material that qualifies under the appropriate standards. To the extent it is practical to do  
6 so, the Designating Party must designate for protection only those parts of material, documents,  
7 items, or oral or written communications that qualify – so that other portions of the material,  
8 documents, items, or communications for which protection is not warranted are not swept  
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations at the level of “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS EYES’ ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
12 CODE” are prohibited. Designations that are shown to be clearly unjustified or that have been  
13 made for an improper purpose (e.g., to unnecessarily encumber or retard the case development  
14 process or to impose unnecessary expenses and burdens on other parties) expose the Designating  
15 Party to sanctions.

16 If it comes to a Designating Party’s attention that information or items that it designated  
17 for protection do not qualify for protection at all or do not qualify for the level of protection initially  
18 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
19 mistaken designation.

20 5.4 Manner and Timing of Designations. Except as otherwise provided in this Order,  
21 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
22 under this Order must be clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

- 24 (a) For information in documentary form (e.g., paper or electronic documents, but  
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the  
26 Producing Party affix the legend “CONFIDENTIAL,” “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY

CONFIDENTIAL – SOURCE CODE” to each page that contains protected material.

(b) A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

(c) For testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony and specify the level of protection being asserted. When it is impractical to identify separately each portion of testimony that is entitled to protection and it appears that substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 30 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted. Only those portions of the testimony that are appropriately designated for protection within the 30 days shall be covered by the provisions of this Stipulated Protective Order.

Alternatively, a Designating Party may specify, at the deposition or up to 30 days afterwards if that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

(d) Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

(e) Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages (including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 30-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(f) For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

5.5 Inadvertent Failures to Designate. An inadvertent failure to designate Disclosure or Discovery Material does not waive the Designating Party’s right to secure protection under this

Order for such material. Upon correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **6. CHALLENGING FINAL CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. After a request for and a final designation has been made, any Party or Non-Party may challenge a final designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to promptly resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication by themselves are not sufficient). In conferring, the Challenging Party must explain the basis for its belief that the final confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, either party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable). Each such motion must be accompanied by a competent



1 declaration affirming that the movant has complied with the meet and confer requirements imposed  
2 in the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating  
4 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
5 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
6 sanctions. All parties shall continue to afford the material in question the level of protection to  
7 which it is entitled under the Producing Party's designation until the court rules on a motion to  
8 maintain or alter the designation.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Discovery Material that is disclosed  
11 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
12 defending, or attempting to settle this litigation. Discovery Material may be disclosed only to the  
13 categories of persons and under the conditions described in this Order. When the litigation has  
14 been terminated, a Receiving Party must comply with the provisions of Section 14 below (*Final*  
15 *Disposition*).

16 Protected Material must be stored and maintained by a Receiving Party at a location and in  
17 a secure manner<sup>1</sup> that ensures that access is limited to the persons authorized under this Order.

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
19 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
20 information or item designated "CONFIDENTIAL" only to:

- 21 (a) The Receiving Party's Outside Counsel of Record in this action, as well as  
22 employees of said Outside Counsel of Record to whom it is reasonably necessary  
23 to disclose the information for this litigation;

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26  
27 <sup>1</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected  
28 Material in password-protected form.

- (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (d) The court and its personnel;
- (e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (f) During their depositions, witnesses in the action to whom disclosure is reasonably necessary, and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.
- (g) The author or recipient of a document containing the information or a custodian, other person who otherwise possessed or knew the information, or person referenced by name in the document.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

- (a) The Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;
- (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for

1 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be  
2 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph  
3 7.4(a), below, have been followed;

4 (c) The Court and its personnel;

5 (d) Court reporters and their staff, professional jury or trial consultants, mock jurors,  
6 and Professional Vendors to whom disclosure is reasonably necessary for this  
7 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
8 (Exhibit A); and

9 (e) During their depositions, witnesses in the action to whom disclosure is reasonably  
10 necessary, and who have signed the “Acknowledgment and Agreement to Be  
11 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered  
12 by the court.

13 (f) The author or recipient of a document containing the information or a custodian,  
14 other person who otherwise possessed or knew the information, or person  
15 referenced by name in the document.

16 7.4 Procedures Relating to Disclosure of Protected Material to Certain Personnel.

17 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating  
18 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item  
19 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or  
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(b) first must make a  
21 written request to the Designating Party that (1) identifies the general categories of “HIGHLY  
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
23 CODE” information that the Receiving Party seeks permission to disclose to the Expert; (2) sets  
24 forth the full name of the Expert and the city and state of his or her primary residence; (3) attaches  
25 a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s); (5) identifies  
26 each person or entity from whom the Expert has received compensation or funding for work in his  
27 or her areas of expertise or to whom the expert has provided professional services, including in  
28

1 connection with a litigation, at any time during the preceding five years; and (6) identifies (by  
 2 name and number of the case, filing date, and location of court) any litigation in connection with  
 3 which the Expert has offered expert testimony, including through a declaration, report, or  
 4 testimony at a deposition or trial, during the preceding five years.

5 (b) A Party that makes a request and provides the information specified in the  
 6 preceding respective paragraphs may disclose the subject Protected Material to the identified  
 7 Expert unless, within 14 days of delivering the request, the Party receives a written objection from  
 8 the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer with the  
 10 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
 11 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may  
 12 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
 13 applicable) seeking permission from the court to do so. Any such motion must describe the  
 14 circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is  
 15 reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any  
 16 additional means that could be used to reduce that risk. In addition, any such motion must be  
 17 accompanied by a competent declaration describing the parties' efforts to resolve the matter by  
 18 agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the  
 19 reasons advanced by the Designating Party for its refusal to approve the disclosure.

20 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
 21 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
 22 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

## 23 **8. SOURCE CODE**

24 (a) To the extent production of source code becomes necessary in this case, a  
 25 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"  
 26 if it comprises or includes confidential, proprietary or trade secret source code.

1 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
2 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’  
3 EYES ONLY” information, and may be disclosed only to the individuals to whom “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed.

5 (c) Any materials designated “HIGHLY CONFIDENTIAL – SOURCE CODE”  
6 produced in discovery shall be made available for inspection, in a format allowing it to be  
7 reasonably reviewed and searched, during normal business hours or at other mutually agreeable  
8 times, at an office of the Producing Party’s counsel or another mutually agreed upon location. The  
9 materials shall be made available for inspection on a secured computer in a secured room without  
10 Internet access or network access to other computers, and the Receiving Party shall not copy,  
11 remove, or otherwise transfer any portion of the “HIGHLY CONFIDENTIAL – SOURCE CODE”  
12 information onto any recordable media or recordable device. The Producing Party may visually  
13 monitor the activities of the Receiving Party’s representatives during any such review, but only to  
14 ensure that there is no unauthorized recording, copying, or transmission of the source code. Each  
15 day that “HIGHLY CONFIDENTIAL – SOURCE CODE” information is viewed, all persons  
16 viewing such information shall sign a log that will include the names of all persons who enter the  
17 room to view the source code and the times when they enter and depart.

18 (d) The Receiving Party may request paper copies of limited portions of information  
19 designated “HIGHLY-CONFIDENTIAL – SOURCE CODE” that are reasonably necessary for  
20 the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial,  
21 but shall not request paper copies for the purposes of reviewing the source code other than  
22 electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide  
23 all such source code in paper form including bates numbers and the label “HIGHLY  
24 CONFIDENTIAL – SOURCE CODE.” The Producing Party may challenge the amount of source  
25 code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set  
26 forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving  
27 Party is the “Designating Party” for purposes of dispute resolution.

(e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized individual.

(f) The Receiving Party shall provide ten (10) days' notice, to the extent possible, to the Producing Party before using "HIGHLY CONFIDENTIAL – SOURCE CODE" information in a deposition or court hearing, or including such information in a court filing, pleading, or expert report.

**9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" that Party must:

- (a) Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- (b) Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- (c) Cooperate with respect to all reasonable procedures sought to be pursued by the

Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. Make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

**11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

**12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

The inadvertent or unintentional disclosure by the Producing Party of information subject to a claim of privilege, including, but not limited to, the attorney-client privilege, or the work product doctrine, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of the party's claim of privilege. As an example, but without limiting the foregoing, the disclosure of privileged information shall be deemed inadvertent if the disclosure was the result of the failure of search terms to capture such documents, so long as the Producing Party believed in good faith, at the time of production, that the search terms were adequate to guard against such production. In all cases, information that contains privileged information or attorney-work product shall be immediately returned, sequestered, or destroyed if information appears on its face to have been inadvertently produced or if the



Producing Party provides notice of the inadvertent production and the basis for the privilege claim within thirty (30) days of the Producing Party's discovery of the inadvertent production. The resolution of any dispute that may arise concerning whether a document is privileged or entitled to protection as trial-preparation material shall be governed by Rule 26(b)(5)(B).

**13. MISCELLANEOUS**

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

13.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the court.

**14. FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Discovery Material to the Producing Party or destroy such material. As used in this subdivision, "all Discovery Material" includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Discovery Material. Whether  
2 the Discovery Material is returned or destroyed, the Receiving Party must submit a written  
3 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
4 by the 60-day deadline that affirms that the Receiving Party has not retained any copies, abstracts,  
5 compilations, summaries or any other format reproducing or capturing any of the Discovery  
6 Material. Notwithstanding this provision, Counsel are entitled to retain archival copies of all  
7 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
8 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
9 and expert work product, even if such materials contain Protected Material. Any such archival  
10 copies that contain or constitute Protected Material remain subject to this Protective Order as set  
11 forth in Section 4 (*Duration*).

12  
13 IT IS SO ORDERED.

14  
15 DATED: September 18, 2023

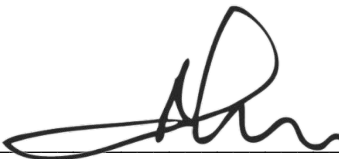
  
\_\_\_\_\_  
Honorable Alex G. Tse  
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Meta Platforms,, Inc. v. Bright Data, Inc.*, Case No. 3:23-CV-00077-EMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]